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ALEXANDER L. STEVAS,
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No. 84-1417

In The

Supreme Court of the United States

October Term, 1984

San Jose Unified School District, Charles Knight, individually and as District Superintendent of the San Jose Unified School District; Neil H. Geier, Jr., Elizabeth J. Allen, Edwin P. Jones, Jr., Mary K. McCreath, and Donald L. Raimondi, individually and as members of the Board of Education of the San Jose Unified School District,

Petitioners,

vs.

Arnulfo M. Diaz and Socorro Diaz, as the parents and next friends of Fernando Diaz, Miguel A. Diaz and Juan F. Diaz; Jose Vasquez, as the parent and next friend of David Vasquez, individually and on behalf of all other persons similarly situated,

Respondents.

On Certiorari to the United States Court of Appeals For The Ninth Circuit

SUPPLEMENTAL BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

Stephen M. Kociol
Counsel of Record
Rebecca E. Thomson
Robert J. Shull
Legal Aid Society of
Santa Clara County
210 South First Street
San Jose, CA 95113
Telephone: (408) 998-5200
Attorneys for Respondents

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COCKLE LAW BRIEF PRINTING CO., (800) 835-7427 Ext. 333

INTRODUCTION

In respondents' Brief in Opposition to Petition for a Writ of Certiorari ("Opposition"), it was demonstrated that petitioners' only colorable claim in this Court is that the Court of Appeals for the Ninth Circuit misapplied the "clearly erroneous" standard of Federal Rule of Civil Procedure 52(a).

After submission of the Opposition, respondents found that this Court had just decided a case dealing with that very issue, *Anderson v. City of Bessemer City,* — U.S. —, 53 U.S.L.W. 4314 (U.S. March 19, 1985).

A reading of this case provides additional reasons for denial of the petition herein; consequently, respondents submit this supplemental brief.

I. The Ninth Circuit's Opinion Is In Harmony With Anderson v. City of Bessemer City.

The case of *Pullman-Standard v. Swint,* 456 U.S. 273 (1982), made clear that discriminatory intent under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.,* is a question of fact which may be overturned on appeal only if it is clearly erroneous. All parties agree that the clearly erroneous standard is applicable to the issue of segregative intent requisite to a finding of liability in a Fourteenth Amendment school segregation case.

Anderson provides guidance in the application of the *Pullman-Standard* rule. In the former case, the Court of Appeals for the Fourth Circuit reviewed the record in a Title VII case and, after discarding findings of evidentiary fact, held that the district court's finding of ultimate

fact, the existence of discrimination, was clearly erroneous. *Anderson* at 4316. This Court explained that a reviewing court is not to conduct a *de novo* review of the record and substitute its judgment for that of the trier of fact. *Anderson* at 4317. As respondents' Brief in Opposition explained, the Ninth Circuit in *Diaz* V showed no lack of deference to the findings of the trial court. Opp. at 18-21.

In *Anderson* this Court reaffirmed the correct standard under Rule 52(a), which is whether, although there is evidence to support the trial court's findings, the reviewing court is left with a firm conviction a mistake has been made. *Anderson* at 4317, citing *U.S. v. U.S. Gypsum,* 333 U.S. 364, 395 (1948). The Fourth Circuit erred in second-guessing the district court's findings on relative qualifications among job applicants and in failing to give due regard to determinations based on credibility. *Anderson* at 4317-18. This amounted to an impermissible *de novo* review. *Anderson* at 4317.

In the case at bench, no such mistakes were made. The Ninth Circuit did not quarrel with any of the district court's findings of evidentiary fact. The Ninth Circuit—and the parties—accepted the district court's "comprehensive and accurate findings covering the significant historical facts." *Diaz* V, Pet. App. A, A-6; Opp. at 16. The Ninth Circuit held that the inferences drawn from these evidentiary facts did not — could not — logically follow. See, e.g., the discussion at *Diaz* V, Pet. App. A, A-2. (It was clear error on the part of the district court to find that decisions unrelated to the existence or non-existence of a neighborhood school policy could be insulated by reference to that same policy).

The Ninth Circuit summed up its review by noting that a careful review of the entire record, accepting the district court's basic findings, and applying the "cumulative weight of the evidence" test required by *Arlington Heights v. Metropolitan Housing Development Corp.* lead to "an *inescapable* conclusion that the [petitioners] intended segregation." *Diaz* V, Pet. App. A, A-30. (Emphasis added.)

The Ninth Circuit, thus, clearly understood and applied the rule articulated in *Anderson* that a Court of Appeals may reject a district court's findings only if they are implausible. *Anderson* at 4317. The Ninth Circuit's review comports with the requirements articulated in *Anderson* and review of this case would be redundant.

For these reasons, the petition should be denied.

Respectfully submitted,

STEPHEN M. KOCIOL
Counsel of Record
of Counsel

REBECCA E. THOMSON
ROBERT J. SHULL
Legal Aid Society of
Santa Clara County
210 South First Street
San Jose, CA 95113
Telephone: (408) 998-5200

Attorneys for Respondents